In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.196 of 1993

.....

Date of decision:11.7.2007

Jupa Singh and another

.....Petitioners

v.

State of Punjab

.....Respondent

....

Present: Mr. Dinesh Goyal, Advocate for the petitioners.

Mr. Mukesh Kaushik, Deputy Advocate General, Punjab for the respondent-State.

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S.S. Saron, J. (Oral)

This criminal revision petition has been filed by the convicts-Jupa Singh and Kuku Singh sons of Gurnam Singh against the order dated 13.3.1993 passed by the learned Additional Sessions Judge, Barnala whereby the appeal of the petitioners against the judgment and order dated 24.10.1990 passed by the learned Judicial Magistrate Ist Class, Barnala has been dismissed. However, in pursuance of the impugned order dated 13.3.1993 Makhan Singh, the brother of the petitioners and Gurnam Singh, the father of the petitioners have been acquitted.

The criminal case was registered against the accused on the statement of Gurdial Singh. The complainant Gurdial Singh and his brother Balbir Singh had their turn for the canal water from 9.00 a.m. to 7.00 p.m. on 23.2.1987. Their fields were being irrigated when Kuku Singh petitioner diverted the water at about 1.00 p.m. to his own fields. Narinder Pal Singh

son of the complainant Gurdial Singh was present in his fields. He saw Kuku Singh petitioner diverting the water to his own fields. He then went to his house and informed his father Gurdial Singh. Gurdial Singh informed his brother, Balbir Singh about this. Both Gurdial Singh and Balbir Singh went to their fields and again diverted the water to their own fields. This led to hot exchange between them i.e. Gurdial Singh and Balbir Singh on one side and Kuku Singh petitioner on the other. Kuku Singh went to his village and Gurdial Singh and Balbir Singh went to their fields where `Barseem' (Trifolium alexandrium) had been sown. The `Barseem' had been standing. Gurdial Singh started cutting the Barseem from his field. Balbir Singh proceeded towards his village. It was about 4.00 p.m., when Balbir Singh had gone only about 40 Karams, the four accused i.e. the petitioners Jupa Singh and Kuku Singh and their brother Makhan Singh and their father Gurnam Singh duly armed came there. Gurnam Singh was armed with Lathi. The petitioners Jupa Singh and Kuku Singh as also Makhan Singh were with Gandasas. Gurnam Singh raised a `Lalkara' that Balbir Singh be taught a lesson for diverting the water to his own fields. Thereupon, injuries were caused by the petitioners and their brother and father to the complainant side i.e. Balbir Singh and Gurdial Singh.

As per statement of Dr. P.K. Goyal (PW-3) he found as many as 16 injuries on the person of Balbir Singh. Injuries No.3 to 9 and 15 were caused by sharp edged weapon and the other injuries were with blunt weapon. Dr. Usha Kiran (PW-2), a Dental Surgeon of Civil Hospital, Sangrur deposed that she had medically examined Balbir Singh on a reference from Dr. P.K. Goyal for injury No.7 and she found that three teeth were missing and there was an incised wound on the upper lip

corresponding to the injury to the teeth and granulation tissue could be seen.

Dr. H.L. Garg, Radiologist (PW-1) deposed that on 24.3.1987 he had X-rayed Balbir Singh and found a fracture of his left humerus, fracture of left spine scapula, fracture of 9th and 10th ribs on the posterior aspect and fracture of left Zygomatic bone. There was no callus formation. Ex.PA is his report and Ex.PA/1 to 8 are the skiagrams.

The accused in their statements in terms of Section 313 Cr.P.C. totally denied the circumstances appearing in evidence against them. They examined Rattan Gopal, an official of the Canal Department as DW-1 and other witnesses. Rattan Gopal deposed that as per record brought by him relating to the Warabandi operative since 1975, the land of Khata No.86 of Bhagwan Singh, Harnam Singh, Balwant Singh, Bant Singh sons of Sadda Singh had turn for Canal water from 1.30 p.m. to 3.49 p.m. and the land of Khata No.84 of Jora Singh, Jang Singh, Bikkar Singh etc. had turn for water from 21.23 hours to 23.20 hours on Sunday. Ex.D.1 is the copy of the relevant portion of Warabandi.

The learned trial Court after considering the evidence and material on record convicted all the four accused and sentenced them to various terms of imprisonment. In appeal, the learned Additional Sessions Judge, Barnala accepted the appeal of Makhan Singh and Gurnam Singh and acquitted them while that of the petitioners was dismissed. Jupa Singh, petitioner stands convicted and sentenced to a term of rigorous imprisonment for one year and fine of Rs.1,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months for the offence under Section 326 IPC. For the other offences i.e. Sections 325 and

324 read with Section 34 IPC the petitioner Jupa Singh has been sentenced to one month rigorous imprisonment each and a fine of Rs.150/- each and in default of payment of fine to undergo further rigorous imprisonment for ten days. The petitioner Kuku Singh has been sentenced to four months RI and a fine of Rs.500/- and in default of payment of fine to undergo further RI for one month for the offence under Sections 326 and 34 IPC. Besides, he has been sentenced to two months RI for the offence under Section 324 IPC and a fine of Rs.300/- and in default of payment of fine to undergo further RI for fifteen days. Kuku Singh has also been convicted and sentenced for the offences under Sections 324 and 325 read with Section 34 IPC to undergo RI for one month each and fine of Rs.150/- each and in default of payment of fine to undergo further RI for ten days. The order of conviction and sentence is assailed by the petitioners.

Mr. Dinesh Goyal, Advocate, learned counsel appearing for the petitioners has submitted that the learned Courts below have gravely erred in convicting and sentencing the petitioners. It is submitted that the case against the petitioners is the same as that of Gurnam Singh and Makhan Singh and since they have been acquitted, the petitioners are also liable to be acquitted. It is submitted that there is an inordinate delay in lodging the FIR which helped the prosecution to make out a false case against the petitioners. The occurrence took place at about 4.00 p.m., however, formal FIR was recorded after nine hours and the special report reached the Magistrate at 9.30 a.m. i.e. after about eight and half hours after the registration of the FIR. It is further submitted that Gurdial Singh and Kartar Singh took Balbir Singh to the hospital which is just in front of the Police

Station but no one went to the Police Station to lodge the FIR. It is also submitted that there are material discrepancies in the eye witnesses account. The evidence of Rattan Gopal (DW-1), it is contended, has not been correctly appreciated.

In response, Mr. Mukesh Kaushik, learned Deputy Advocate General, Punjab appearing for the respondent-State has submitted that the prosecution has proved its case in all material aspects and there is no infirmity in the orders of the learned Additional Sessions Judge, Barnala which would warrant interference of this Court in exercise of its revisional jurisdiction. It is submitted that the minor discrepancies pointed out by the learned counsel for the petitioners are not such which would entitle the petitioners to be acquitted of the offences.

I have given my thoughtful consideration to the contentions of the learned counsel appearing for the parties. A perusal of the impugned judgment and order would show that from the evidence of Dr. P.K. Goyal (PW-3) it has come on record that Balbir Singh suffered as many as 16 injuries. Injuries No.3 to 9 and 15 were caused by sharp edged weapon whereas the other injuries were caused with blunt weapon. Probable duration of the injuries was of 24 hours. Injuries No.1 to 6 were kept under observation and injury No.7 was referred to the Dental Surgeon for opinion. Injuries No.1 to 4, 7 to 13 and 15 were advised for X-ray examination. Dr. Usha Kiran (PW-2), a Dental Surgeon of Civil Hospital, Sangrur had medically examined Balbir Singh and she found that his three teeth were missing and there was an incised wound on the upper lip corresponding to the injury to the teeth and granulation tissue could be seen. The injuries

were opined as grievous in nature and their probable duration was within 72 hours. The injuries were caused by sharp edged weapons. The report of Dr. Usha Kiran is Ex.P.8. Dr. H.L. Garg, Radiologist (PW-1) deposed that on 24.3.1987 he had X-rayed Balbir Singh and found a fracture of his left humerus, fracture of left spine scapula, fracture of 9th and 10th ribs on the posterior aspect and fracture of left Zygomatic bone. There was no callus formation. Ex.PA is his report and Exs.PA/1 to 8 are the skiagrams. The petitioners have denied their involvement in the occurrence. However, the evidence on record and also the injuries suffered go to show that the same are duly made out against the petitioners. The contention of the learned counsel for the petitioners that they are liable to be treated similarly as their brother Makhan Singh and their father Gurnam Singh is not borne out from the record and is in fact misconceived. The learned Additional Sessions Judge has also considered the delay aspect in the registration of the FIR and thereafter in sending the special report to the Illaqa Magistrate. The occurrence took place at 4.00 p.m. and two persons besides the injured had witnessed the occurrence. They were with the injured when he was taken to the hospital. The FIR was recorded at 1.00 a.m. i.e. after about nine hours and the special report was sent to the learned Magistrate at 9.30 a.m. i.e. after about eight and half hours. The learned Additional Sessions Judge observed that this delay would have helped the prosecution side to have consultations and deliberations with a view to rope in as many as persons of the accused side as possible. There is indeed a general tendency to rope in even innocent relatives in an incident of this nature. Therefore, the brother and father of the petitioners may indeed having been falsely roped in,

cannot be ruled out. In the circumstances, the acquitting of Makhan Singh and Gurnam Singh by the learned Additional Sessions Judge would not make out a case in favour of the petitioners in any manner on the same nature. It was observed that the role attributed to Makhan Singh was different. The discrepancies in this regard have been noticed. Besides, it was observed that insofar as the petitioners Jupa Singh and Kuku Singh are concerned the prosecution case against them is flawless and admits of no doubt.

The occurrence had taken place during day time and there was no question of mistaken identity. The injured had named them clearly and specifically for some of the injuries found on their person on medical examination. The injuries on the person of Balbir Singh were corroborated by his brother Gurdial Singh. It is not a case where somebody had been substituted for the culprits. Besides, there was a motive for the petitioners to commit the crime, inasmuch as, there was a dispute with regard to turn of the water for irrigating their respective fields. Even otherwise the prosecution witnesses had no reason whatsoever to falsely implicate the petitioners. The evidence of Rattan Gopal (DW-1) has also been correctly appreciated. He admitted that on 29.10.1985 there was an order vide which distribution of water was spelt and the parties were drawing water since then from RD 10790/L. Keeping in view the findings and conclusions reached at by the learned Additional Sessions Judge there is no infirmity in the order passed by him. Consequently, the order convicting them calls for no interference in exercise of the revisional jurisdiction of this Court.

Learned counsel for the petitioner has, however, submitted that

the occurrence in the case took place on 23.2.1987 and a period of more than 20 years has lapsed and at this stage it would cause grave injustice if the petitioners are now directed to undergo the sentence. It is submitted that in the period of last 20 years, the petitioners have been residing peacefully and there are no complaints against them. In the circumstances, it is submitted that the sentence of imprisonment be reduced to that already undergone keeping in view the time gap from the occurrence or in the alternative they may be released on probation.

Learned counsel for the State has opposed the said prayer and submitted that keeping in view the grave nature of injuries caused, the petitioners are not entitled to be released by way of reduction in sentence or on probation.

After giving my thoughtful consideration to the question of sentence, in my view, it would be unjust at this stage after a lapse of 20 years to send the petitioners to the jail to undergo their remaining sentence. The petitioner No.1 Jupa Singh is to undergo RI for one year and petitioner No.2 Kuku Singh is to undergo RI for four months. The substantive sentences of imprisonment have been ordered to run concurrently in the case. However, it is also to be noticed that 16 injuries were caused to Balbir Singh in the occurrence that took place on 23.2.1987. Therefore, by adopting a balanced process, in my view, the ends of justice would be met by releasing the petitioners on probation for good conduct with the direction to furnish bail bonds and be of good behaviour for a period of one year. Besides, each of the petitioners shall pay an amount of Rs.5,000/- each to the injured Balbir Singh in terms of Section 357 Cr.P.C. The said

compensation that is to be paid is only for the purpose of assuring the victim that he has not been forgotten in the criminal justice system and despite time gap this amount has been awarded though it may not be suitable to injuries that have been suffered.

In the light of the above, the criminal revision petition is disposed of with a direction that on furnishing of necessary bonds to maintain good behaviour and peace for a period of one year the petitioners are released on probation. The sentences imposed are, therefore, kept in abeyance and would be operative in case the required bond to maintain peace and good behaviour are not furnished. The petitioners shall, however, pay Rs.5,000/- each as compensation to the injured Balbir Singh which shall be deposited by them in the trial Court at Barnala and the trial Court shall disburse the amount to Balbir Singh.

July 11, 2007. **(S.S. Saron)**
Judge

hsp

NOTE: Whether to be referred to the Reporter or not:Yes/No